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REGISTRATION NO. \_\_\_\_\_ Filed 1425

MIAMI  
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SEP 20 1985 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

5-283A034

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REGISTRATION NO. \_\_\_\_\_ Filed 1425

SEP 20 1985 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

September 18, 1985

No. \_\_\_\_\_  
Date SEP 20 1985

Fee \$ 20.00

ICC Washington, D.C.

Secretary  
Interstate Commerce Commission  
Washington, D.C.

Dear Secretary:

On behalf of our client, Connell Finance Company, Inc., I have enclosed an original and one counterpart of the documents described below to be recorded pursuant to 49 USC §11303.

These documents are a lease, a primary document dated as of July 26, 1985, and a lease supplement, a secondary document dated as of September 13, 1985. The enclosed supplement is connected with the enclosed lease.

The names and addresses of the parties to the documents are as follows:

Lessor: Connell Finance Company, Inc.  
45 Cardinal Drive  
Westfield, N.J. 07092

Lessee: Central Louisiana Electric Company, Inc.  
P.O. Box 111  
Alexandria, La. 71301

A description of the equipment covered by the documents follows:

5 High Side, 100 ton, rotary dump gondola coal cars, numbered RECX 3001 through 3005

A fee of \$20 is enclosed. Please return the original of each document to:

Ian Shrank, Esq.  
Morgan, Lewis & Bockius  
101 Park Avenue  
New York, New York 10178

SEP 20 1 06 PM '85  
FBI - NEW YORK  
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*Connolly*  
*Don Cooke*

MORGAN, LEWIS & BOCKIUS

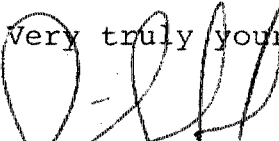
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A short summary of the documents to appear in the index follows:

Lease: Lease of Railroad Equipment, between Connell Finance Company, Inc., as lessor, 45 Cardinal Drive, Westfield, N.J. 07092, and Central Louisiana Electric Company, Inc., as lessee, P.O. Box 111, Alexandria, La. 71301, dated as of July 26, 1985 and covering 5 High Side, 100 ton, rotary dump gondola coal cars.

Lease Supplement: Lease Supplement No. 1 (to Lease of Railroad Equipment dated as of July 26, 1985), between Connell Finance Company, Inc., as lessor, 45 Cardinal Drive, Westfield, N.J. 07092, and Central Louisiana Electric Company, Inc., as lessee, P.O. Box 111, Alexandria, La. 71301, dated as of September 13, 1985, and covering 5 High Side, 100 ton, rotary dump gondola coal cars.

Very truly yours,



Ian Shrank

cc: Daniel Morash

14791

RECORDATION NO. \_\_\_\_\_ Filed 1425

SEP 20 1985 -1 15 PM

INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of July 26, 1985

between

CONNELL FINANCE COMPANY, INC.,

Lessor

and

CENTRAL LOUISIANA ELECTRIC COMPANY, INC.,

Lessee

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LEASE OF RAILROAD EQUIPMENT, dated as of August 1, 1985, between CONNELL FINANCE COMPANY, INC., a New Jersey corporation, and CENTRAL LOUISIANA ELECTRIC COMPANY, INC., a Louisiana corporation (the "Lessee").

#### SECTION 1. DEFINITIONS.

For all purposes of this Lease, the following terms shall have the following meanings:

Additional Rent: as defined in Section 3.2.

Additions: as defined in Section 12.4.

Appraisal Procedure: is the following procedure for determining the Fair Market Sales Value and/or the Fair Market Rental Value of any Unit or Units for purposes of this Lease: if either party hereto shall have given written notice to the other requesting a determination of such value by the Appraisal Procedure hereunder, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 10 Business Days after such notice is given, each party shall appoint an independent appraiser within 20 Business Days after such notice is given and the two appraisers so appointed shall within 30 Business Days after such notice is given appoint a third independent appraiser; but if either party shall fail to appoint an independent appraiser within such 20-Business Day period the independent appraiser appointed by the other party within such period shall be deemed to have been appointed by mutual agreement for the purposes of the immediately preceding sentence. If no such third appraiser is appointed within 30 Business Days after such notice is given, either party may request the American Arbitration Association to appoint such an appraiser within 20 Business Days after such request is made, and both parties shall be bound by any appointment so made within such 20-Business Day period. If no such appraiser is appointed within 20 Business Days of such request to the American Arbitration Association or within 40 Business Days after the original notice requesting a determination pursuant to the Appraisal Procedure, whichever is earlier, either party may apply to any court having jurisdiction to make such appointment, and both parties shall be bound by any appointment made by such court. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Sales Value and/or the Fair Market Rental Value (as appropriate) of such Unit or Units within 30 Business Days after his or their appointment. If the parties shall have appointed a single appraiser, such appraiser's determination shall be final. If three appraisers shall be appointed, their determination shall be averaged, the determination which differs most from such average shall be excluded, the remaining two determinations shall be averaged and such average shall be final. All costs and fees of appraisers in making any such determination shall be paid by Lessee.

Basic Agreements: this Lease, the Lease Supplements, and the Warrantee Documents. The Basic Agreements to which any person referred to herein is a signatory are hereinafter called its "Basic Agreements".

Basic Rent: as defined in Section 3.1.

Business Day: any day other than a Saturday, Sunday or any other day on which banking institutions in Louisiana, New York or New Jersey are required or authorized by law to be closed.

Calculation Date: as defined in Section 10.1.

Casualty Occurrence: as defined in Section 10.1.

Casualty Value: as defined in Section 10.1.

Closing Date: the date of a closing of the delivery of Equipment under this Lease and the applicable Lease Supplement and of the related transactions contemplated herein.

Code: the Internal Revenue Code of 1954, as amended from time to time.

Equipment: the units of railroad equipment set forth in the applicable Lease Supplement, or such portion thereof as is delivered and accepted under the terms of this Lease, together with all additions, modifications or improvements thereto or replacements thereof as contemplated by Section 2.

Event of Default: as defined in Section 21.

Fair Market Rental Value or Fair Market Sales Value: with respect to a Unit shall be determined for purposes of Section 10.3, 18, and 19 (including for purposes of determining Termination Value and Casualty Value for any renewal period), as of the time or times herein specified, on the basis of, and shall be equal in amount to, the Fair Market Rental Value or the Fair Market Sales Value of such Unit mutually determined by the Lessor and the Lessee, or as determined by the Appraisal Procedure, to be the value which would be obtained in an arm's-length transaction between an informed and willing lessee-user or buyer-user (other than a lessee currently in possession or a used equipment or scrap dealer) under no compulsion to lease or buy, as the case may be, and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in determining Fair Market Rental Value or Fair Market Sales Value, it shall be assumed that the Unit the subject of such appraisal is in the condition required under Section 12.3 and costs of disassembly and transportation of the Units as contemplated by Section 20 shall not be a deduction from value except that, for purposes of Section 10.3, such Unit shall be deemed to be in its actual condition and such costs shall be deducted from value.

Indemnities: as defined in Section 9.2.

Interim Rent: as defined in Section 3.1.

Lease Supplement: Document or documents substantially in the form of Exhibit A hereto, dated as of the date specified therein, between the Lessor and the Lessee, for the purpose of leasing the Equipment.

Lessor's Lien: Lien on a Unit or any part thereof which either (i) results from any acts of or claims against the Lessor arising out of any event or condition not related or connected to the ownership, leasing, use or operation of the Equipment or any other transaction contemplated by any of the Basic Agreements or (ii) results from an affirmative act of the Lessor which is neither (x) consented to in writing by the Lessee nor (y) taken in connection with any default or Event of Default under this Lease nor (z) authorized by or taken pursuant to any of the provisions of the Basic Agreements or any document executed and delivered pursuant thereto.

Lien: any mortgage, pledge, lien, charge, encumbrance, retention of title, security interest or claim.

Manufacturer: as defined in the applicable Lease Supplement.

Part: any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit, as an Addition or otherwise.

Permitted Liens: Liens for taxes, assessments or governmental charges or levies, in each case not due or delinquent; inchoate mechanics', materialmen's, repairmen's or similar Liens arising in the ordinary course of business and not delinquent; and any Lien created pursuant to Section 15 hereof.

Purchase Price: as defined in the applicable Lease Supplement.

Rent Payment Date: as defined in the applicable Lease Supplement.

Security Documents: such documents, if any, as may be required pursuant to Section 15 hereof.

Taxes: as defined in Section 9.2.

Termination Date: as defined in Section 17.

Termination Value: as defined in Section 17.

Unit: a unit of the Equipment

Warranty Documents: As defined in the applicable Lease Supplement.

## SECTION 2. LEASE AND DELIVERY OF EQUIPMENT.

The Lessor agrees to purchase and lease to the Lessee on the terms and conditions set forth herein each Unit delivered to and accepted by the Lessee on behalf of the Lessor under the applicable Lease Supplement. The Lessor shall deliver or cause to be delivered each such Unit to be subjected to this Lease at the place within the United States of America at which such Unit is delivered to the Lessee under the applicable Lease Supplement. Upon such delivery of a Unit under the applicable Lease Supplement, the Lessee will cause an authorized representative or representatives of the Lessee to inspect



such Unit and, if such Unit is found to be in good order and in conformity with the specifications and requirements set forth in the applicable Warrantee Documents, and marked in accordance with the provisions of Section 8 of this Lease, and if the conditions set forth in Section 7 have been complied with to the satisfaction of the Lessor, to accept delivery of such Unit on behalf of the Lessor and to execute and deliver a Lease Supplement with respect thereto, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessor under the applicable Lease Supplement and to have been delivered to and accepted by the Lessee under this Lease, and such Unit shall thereafter be subject to all of the terms and conditions of this Lease. Each such Unit not so delivered to and accepted by the Lessor under the applicable Lease Supplement and by the Lessee hereunder shall be excluded from this Lease and shall be excluded from the terms "Unit" and "Equipment" for all purposes of this Lease.

This Lease shall extend to any and all additions, modifications or improvements to the Equipment which become the property of the Lessor pursuant to this Lease and any and all replacements of the Equipment or any part thereof shall constitute accessions to the Equipment, shall be subject to all terms and conditions of this Lease, and shall be included in the term "Equipment", as used in this Lease; provided that this Lease shall not extend to any coal cars purchased pursuant to the Purchase Agreement which are not listed in Schedule A to an applicable Lease Supplement.

### SECTION 3. RENTALS.

3.1. Interim and Basic Rent. The Lessee will pay to the Lessor rental for each Unit in conformance with the provisions of i) Section 4 of the applicable Lease Supplement ("Interim Rent") and ii) Section 5 of the applicable Lease Supplement ("Basic Rent").

The Basic Rent percentage specified in such Lease Supplement and the Casualty Value and Termination Value percentages specified in Schedule B thereto are subject to adjustment from time to time as provided in Section 3.5 hereof and the Lessor and the Lessee shall execute an addendum to such Lease Supplement to reflect each such adjustment, provided that the failure to execute and deliver an addendum shall not affect any such adjustment.

3.2. Additional Rent. The Lessee will also pay, from time to time as provided in this Lease or on demand, as additional rent ("Additional Rent"), (a) all other amounts, liabilities and obligations which the Lessee assumes or agrees to pay, (b) interest (to the extent legally enforceable) at the rate of 15 3/4% per annum on such of the foregoing amounts, liabilities and obligations which are not paid in full when due or on the date of such demand, as the case may be, from such date until payment in full thereof, and (c) interest (to the extent legally enforceable) at the rate of 15 3/4% per annum on all overdue installments of Basic Rent from the due date thereof until payment. In the event of any failure on the part of the Lessee to pay any Additional Rent, the Lessor or any other person entitled to receive the same shall have all rights, powers and remedies provided for in this Lease or at law or in equity or otherwise in the case of nonpayment of Basic Rent.

3.3. Place of Payment, etc. Each payment of Basic Rent or Additional Rent pursuant to Section 3.1 or 3.2 and any other amount payable under this Lease shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, in immediately available funds and by 11:00 a.m., New York time, on the date set forth for such payment in this Lease, at the office of the Lessor referred to in Section 27 (or to such other person as the Lessor may from time to time direct in writing). If the date on which any such payment is to be made is not a Business Day, such payment shall be made on the next preceding Business Day.

3.4. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein expressly provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Manufacturer, or any other person, whether under this Lease or any other Basic Agreement or otherwise, including any rights of Lessee by subrogation hereunder or thereunder against the Lessor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of or defect of title to all or any of the Units from whatsoever cause, any Liens, or rights of others with respect to any of the Units, the taking or requisitioning of any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of the Lease, any insolvency of or bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

3.5. Adjustment of Basic Rent, Casualty Value and Termination Value. (a) The Basic Rent percentage specified in the applicable Lease Supplement and the Casualty Value and Termination Value percentages specified in Schedule B thereto (herein collectively called the "Percentages") are based upon the accuracy of the assumptions set forth in Schedule C thereto. If on the Closing Date any such assumptions are incorrect, or if any of such assumptions shall become incorrect at the result of an amendment to the Code which is enacted after the Closing Date but on or before December 31, 1985,

then the Percentages shall be adjusted (upward or downward, as the case may be) to the extent, if any, necessary to provide the Lessor with at least the same after-tax yield and periodic recovery of net cash flows that it would have had if such assumptions had been correct at and as of the Closing Date.

(b) If the Transaction Expenses paid by the Lessor pursuant to Section 26 shall exceed or be less than the amount specified in Schedule C to the applicable Lease Supplement, then the Percentages shall be adjusted to such respective amounts as shall be necessary to provide the Lessor with at least the same after-tax yield and periodic recovery of net cash flows that it would have received had such Transaction Expenses been equal to such amount.

(c) The amount of any required adjustment provided for under this Section 3.5 shall be determined by the Lessor from time to time, with the final adjustment being made no later than 10 Business Days prior to the second Rent Payment Date under the applicable Lease Supplement. As to each adjustment, the Lessor shall certify in writing to the Lessee that such adjustment was determined pursuant to, and in compliance with, the requirements of this Section 3.5. Upon request of the Lessee made within a reasonable time following the delivery to the Lessee by the Lessor of any such certification, the Lessor shall discuss the basis of the adjustment referred to therein with the Lessee or its representative in good faith, provided that, after any such good faith discussions, the final determination made by the Lessor shall, subject to the last sentence of this paragraph (c) of this Section 3.5, be conclusive as to all of the parties hereto. The Lessee agrees that it will not have the right to inspect the tax returns or any other document of the Lessor in order to confirm the calculations or any determination made by the Lessor pursuant to this Section 3.5, provided that upon written request by the Lessee the Lessor shall deliver a certificate of a Senior Officer confirming that the adjustments set forth in the written statement to which such request relates have been reviewed for accuracy by such Senior Officer and that the conclusions made by the Lessor, as set forth in such written statement, are accurate and in conformity with the provisions of this Section 3.5.

#### SECTION 4. TERM OF LEASE

The term of this Lease as to any Unit shall begin on the Closing Date for such Unit and, subject to the provisions of Sections 10, 17, 18 and 21.2, the term for all Units shall terminate on September 1, 1999. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, all obligations of the Lessee hereunder shall survive the expiration of the term of this Lease.

#### SECTION 5. REPRESENTATIONS OF THE LESSEE

The Lessee represents, warrants and covenants to each of the other parties hereto as follows:

5.1. The Lessee is not entering into any of the Basic Agreements or any other transaction contemplated thereby, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, the Lessor is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

5.2. The Lessee has furnished to the Lessor consolidated balance sheets of the Lessee as of December 31, 1984, and March 31, 1985, and related consolidated statements of income and retained earnings for the year and period then ended; such consolidated financial statements are in accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby; and such statements present fairly the financial condition of the Lessee at such dates and the results of its operations for such periods and from the date of such most recent balance sheet there has not been any material adverse change in the business or financial condition of the Lessee.

5.3. The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Louisiana, has the corporate power and authority and legal right to carry on its business as now conducted and is not required to qualify to do business in any other jurisdiction in order to own or lease its properties or carry on its business as presently conducted.

5.4. The execution, delivery and compliance by the Lessee with all of the provisions of the Basic Agreements are within the corporate powers of the Lessee, and are legal and will not conflict with, result in any breach in any of the provisions of, constitute a default under, or result in the creation of any lien upon any property of the Lessee under the provisions of, any charter instrument, by-law, bond, debenture, note, mortgage, indenture, deed of trust, agreement or other instrument to which the Lessee is a party or by which it may be bound. The Lessee is not in default, and no event has occurred which, with the giving of notice or lapse of time or both would constitute a default, under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is a party or by which its property may be bound which would materially and adversely affect the Lessee's ability to perform its obligations under the Basic Agreements.

5.5. No authorization or approval from, consent of or filing, registration or qualification with any governmental or public body or authority of the United States of America or of any of the States thereof or the District of Columbia is necessary for the execution, delivery and performance by the Lessee of the Basic Agreements.

5.6. There is no suit, action or proceeding pending, or to the knowledge of the Lessee threatened, against or affecting the Lessee or any of its property in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely

affecting the properties, business, prospects, profits or condition (financial or other) of the Lessee, except as is set forth in the Lessee's Form 10-Q dated March 31, 1985 as filed with the Securities and Exchange Commission (the "SEC"), or the ability of the Lessee to perform its obligations under the Basic Agreements. The Lessee is not in default with respect to any judgement, award or order of any court, governmental authority or arbitration board or tribunal which would materially and adversely affect the ability of the Lessee to perform its obligations under any of the Basic Agreements except as is set forth in said Form 10-Q.

5.7. All tax returns required to be filed by the Lessee in any jurisdiction have in fact been filed, and all taxes, assessments, fees and other governmental charges upon the Lessee, or upon any of its properties, income or franchises, which are due and payable by the Lessee have been paid (and any thereof not due and payable by the Lessee do not encumber the properties, income or franchises of the Lessee) and the provisions for taxes on the books of the Lessee are adequate. The Lessee does not know of any proposed or potential additional tax assessment or basis for such assessment against it which might materially adversely affect its ability (financial or other) to perform its obligations under the Basic Agreements.

5.8. The Lessee, to the best of its knowledge after due inquiry:

(i) is not in violation of any laws, ordinances or governmental rules or regulations to which it is subject, and

(ii) has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its business,

which violation or failure to obtain might materially adversely affect its ability (financial or other) to perform its obligations under the Basic Agreements.

5.9. Subject only to liens shown on the Lessee's financial statements referred to in Section 5.2, the Lessee has good title to (or valid leasehold estates in) all the property it purports to own (or lease), and all franchises and rights necessary to operate the same, including the property reflected in the most recent balance sheet referred to in Section 5.2 (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business).

5.10. The Lessee has duly filed with the SEC its report on Form 10-K for 1984 and all reports, including without limitation, those on Form 10-Q and Form 8-K, since 1984 required to be filed by it under the Securities Exchange Act of 1934, and covenants that it shall duly file all reports required to be filed by it under such Act or any successor thereto, so long as the Lease remains in effect. Said Form 10-K for 1984 and each Form 10-Q and 8-K heretofore filed in 1985 do not contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein not misleading.

5.11. Prior to the delivery any Unit the Lease and the applicable Lease Supplement will be duly filed pursuant to 49 U.S.C. §11303 and, within 21 days from the execution thereof, deposited with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 will protect the Lessor's rights therein and in the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency thereof is necessary in order to protect the rights of the Lessor under the Lease or Lease Supplements in and to the Equipment in any State of the United States or the District of Columbia. The Equipment is intended for a use related to interstate commerce.

5.12. The Basic Agreements have been duly authorized, and have been, or will be on or before delivery of any Units, duly executed and delivered by the Lessee and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute or will then constitute valid, legal and binding agreements, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to the qualifications that the enforcement of certain remedies may be limited by principles of equity.

5.13. The Lessee has not directly or indirectly offered or sold any interest in the Equipment to, solicited offers to buy such interest from, or otherwise approach or negotiated in respect of the purchase or sale or other disposition of any such interest with, any person so as to require registration of the sale of any such interest in accordance with the provisions of the Securities Act of 1933, as amended. The Lessee will not offer any such interest to, or solicit any offer to buy any thereof from, any other person or approach or negotiate with any other person in respect thereof, so as to require registration of the sale of any such interest in accordance with the provisions of said Securities Act.

5.14. The Lessor will not, by virtue of the transactions contemplated by this Agreement, be or become an "electric utility company" for purposes of the Public Utility Holding Company Act of 1935, as presently in effect (the "1935 Act"), nor will the Lessor, by virtue of the transactions contemplated by this Lease, be or become subject to regulation under the 1935 Act, or the Federal Power Act, as amended, or any state public utility statute or regulation.

5.15. None of the Units have been or will be placed in service (within the meaning of Section 46(c) of the Internal Revenue Code of 1954, as amended) by the Lessee or any other person prior to delivery and acceptance of such Units under the Lease Supplements and the Lease.

5.16. Each Unit will qualify in respect of the Lessor as property i) whose cost will be recovered using the ACRS Deductions (as defined in Section 9.3 hereof), and ii) the Lessor will be entitled to the Investment Credit (as defined in Section 9.3 hereof).

5.17. As of the applicable Closing Date, i) each Unit both separately and collectively will have a reasonably estimated economic life of

at least 20 years, ii) the reasonably estimated residual Fair Market Value of each Unit, both separately and collectively, at the end of the Fixed Lease Term and any storage period is at least 20% of the sum of the portion of the Purchase Price applicable thereto plus a pro rata share of all Transaction Expenses (determined without taking into account inflation or deflation and in accordance with the applicable IRS Guidelines), iii) neither the Equipment in its entirety nor any portion thereof constitutes limited use property, iv) no severable or nonseverable improvement will be required by the Lessee in order to complete any Unit for its intended use, and v) from and after the Closing Date of each Unit, the Lessee will have no investment or obligation to pay any portion of the costs in connection with the acquisition and financing of each such item.

5.18 no Federal tax liens (including tax liens filed pursuant to Section 6323 of the United States Internal Revenue Code of 1954, as amended) or, to the best of its knowledge and belief, other tax liens have been filed and are currently in effect against the Lessee, which would adversely affect the interests of the Lessor in the Equipment or the Lease; and

5.19 no mortgage, deed of trust or other lien of any nature whatsoever now in existence which now covers or affects or which may hereafter cover or affect any property or interest therein of the Lessee now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Lessor therein.

In the event that any representation herein set forth which is qualified by a reference to the knowledge of the Lessee shall prove inaccurate in any material respect, the Lessee shall promptly remedy or cure such condition to the extent necessary to restore the accuracy of such representation, and shall indemnify and hold harmless the Lessor from all liabilities, damages or costs arising out of such inaccuracy.

## SECTION 6. REPRESENTATIONS OF THE LESSOR

The Lessor represents and warrants as follows:

6.1. It is making its investment pursuant to this Lease with its general assets, and not directly or indirectly with the assets of, or in connection with any arrangements or understanding in any way involving, any employee benefit plan (other than a governmental plan) with respect to which it, or the Lessee is a party in interest, all within the meaning of ERISA.

6.2. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation, and has the corporate power, authority and legal right to carry on its business as now conducted and is duly authorized to execute and deliver the Basic Agreements and to fulfill and comply with the terms, conditions and provisions thereof.

6.3. The Basic Agreements have been duly authorized, executed and delivered by the Lessor and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid agreements of the Lessor, enforceable against the Lessor in accordance with their terms except

as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to the qualifications that the enforcement of certain remedies may be limited by principles of equity.

6.4. The execution, delivery and compliance by the Lessor with the provisions of the Basic Agreements do not conflict with, result in a breach of any of the provisions of, constitute a default under, or result in the creation of any lien upon any property of the Lessor under the provisions of, any agreement charter, instrument, by-law or other instrument to which the Lessor is a party or by which any of its property is bound. The Lessor is not in default, and no event has occurred which, with the giving of notice or lapse of time or both would be a default, under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is a party or by which it or its property is bound which would materially and adversely affect its ability to perform its obligations under the Basic Agreements.

6.5. It is acquiring its interest in the Equipment for its own account, for investment and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same, but subject, nevertheless, to any requirement of law that the disposition of its property be at all times within its control.

6.6. It has not directly or indirectly offered or sold any interest in the Equipment to, solicited offers to buy any such interest from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of such interest with, any person so as to require registration of the sale of such interest in accordance with the provisions of the Securities Act of 1933, as amended. The Lessor will not offer such interest to, or solicit any offer to buy any thereof from, any person or approach or negotiate with any other person in respect thereof, so as to require registration of the sale of such interest in accordance with the provisions of said Securities Act.

#### SECTION 7. CONDITIONS PRECEDENT

The obligations of the Lessor to make its payment to the Manufacturer on any Closing Date pursuant to Section 2 hereof shall be subject to the receipt by the Lessor of a certificate of an officer of the Lessee, on or prior to such Closing Date to the effect that all of the conditions of this Section 7 have been fulfilled or irrevocably waived and that the obligations of the Lessor to purchase and pay for Units of Equipment on such Closing Date pursuant to Section 2 hereof are unconditional, absolute and irrevocable, and to the receipt by the Lessor, on or prior to the Closing Date, of the following documents, dated on or not more than five days prior to the Closing Date:

7.1. An opinion of Messrs. Morgan, Lewis & Bockius counsel for the Lessor, to the effect that



(i) the Lease, and the Lease Supplements have been duly filed in accordance with 49 U.S.C. §11303 and no other filing or recordation is necessary for the protection of the rights of the Lessor therein or in the Equipment in any state of the United States of America or the District of Columbia;

(ii) no authorization or approval from any governmental or public body or authority of the United States of America is, to the knowledge of said counsel, necessary for the execution, delivery and performance of the Basic Agreements;

(iii) the Lessor will not, by virtue of the transactions contemplated by this Agreement, be or become an "electric utility company" for purposes of the 1935 Act, nor, by virtue of the transactions contemplated by the Agreement, be or become subject to regulations under the 1935 Act, or the Federal Power Act, as amended.

7.2. An opinion of counsel for the Lessee to the effect that:

(i) the Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Louisiana, has all requisite power and authority to execute and deliver and to perform its obligations under the Basic Agreements and to own its properties and to carry on its business as now conducted, and is not required to qualify to do business in any other jurisdiction in order to own or lease its properties or carry on its business as presently conducted;

(ii) neither the execution and delivery of the Basic Agreements nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions or the certificate of incorporation (as amended) or the by-laws (as amended) of the Lessee or, to the knowledge of said counsel after due inquiry, of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which the Lessee is now a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien upon any property of the Lessee pursuant to any provisions of any thereof;

(iii) neither the execution and delivery of the Basic Agreements nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will violate any law, rule or regulation of the State of Louisiana or, to the knowledge of said counsel after due inquiry, conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any order, award, injunction or decree of any court or governmental instrumentality or arbitrator;

(iv) to the knowledge of such counsel after due inquiry, (x) there is no suit, action or proceeding pending or threatened against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Lessee except as is set forth in the Lessee's Form 10-Q dated March 31, 1985, as filed with the SEC, or the ability of the Lessee to perform its obligations under the Basic Agreements, and (y) the Lessee is not in default with respect to any order, judgment or award of any court, governmental authority or arbitration board or tribunal which default would materially and adversely affect the ability of the Lessee to perform its obligations under any of the Basic Agreements except as is set forth in said Form 10-Q;

7.3. The Warrantee Documents required in the applicable Lease Supplement to be executed by the Manufacturer have been duly authorized, executed and delivered by the Manufacturer and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of the Manufacturer, enforceable against the Manufacturer in accordance with their terms.

7.4. A certificate of a financial officer of the Lessee, which shall be true and correct in all respects, to the effect that the Lessee's representations and warranties contained in this Agreement are true on and as of the Delivery Date, with the same effect as though made on such date, that the Lessee is not currently in default nor does a condition exist nor has an event occurred which with the lapse of time and/or the giving of notice would constitute a default under the Basic Agreements.

In expressing the opinions specified in Sections (7.1), (7.2), and (7.3), counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and that the enforcement of certain remedies may be limited by principles of equity.

The Lessee shall furnish or cause to be furnished to the Lessor five business days prior written notice of each Closing Date.

#### SECTION 8. IDENTIFICATION MARKS

The Lessee will cause each Unit to be kept numbered with the identifying number set forth in the applicable Lease Supplement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following legend: "Owned by Connell Finance Company, Inc. and subject to a Lease to Central Louisiana Electric Company, Inc.", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions

thereto as from time to time may be required by law or reasonably requested by the Lessor in order to protect the Lessor's title to and property interest in such Unit and the rights of the Lessor under this Lease or the interest of any assignee of this Lease pursuant to Section 15. The Lessee will not place any Unit in service if such legend is not so marked on both sides thereof and will replace promptly any such legend which may be removed, obliterated, defaced or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (a) a statement of the new number or numbers to be substituted therefore shall have been filed with the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease or the Security Documents, or any Uniform Commercial Code financing statement or similar instrument relating thereto, shall have been filed, recorded and deposited and (b) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that (i) such statement has been so filed, recorded and deposited and such filing, recordation and deposit is sufficient to protect the Lessor's interests in such Units or (ii) no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary or advisable to protect the respective interests of the Lessor in such Units.

The Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership, except as above provided and except that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or its affiliates, so long as this Lease shall remain in effect, on railroad equipment used by it of the same or similar type for convenience of identification of the right of the Lessee or its affiliates to use the Equipment as permitted under this Lease.

## SECTION 9. INDEMNITIES

9.1. General Indemnity. The Lessee shall pay or cause to be paid, and shall protect, indemnify and hold the Lessor and its agents, servants and employees (the "Indemnitees") harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees, including any or all liabilities, obligations, damages, costs, interests, penalties, disbursements, expenses (including without limitation reasonable attorneys' fees and expenses of the Indemnitees relating thereto) in any way relating to or arising or alleged to arise out of this Lease or any of the other Basic Agreements or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by the Indemnitees or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near any Unit or in any manner growing out of or connected with, or alleged

to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation (except by the Indemnitees seeking indemnity hereunder), of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim arising out of any of the obligations of the Lessor under its Basic Agreements, except to the extent such claim arises from the willful misconduct or gross negligence of the Lessor; or (viii) any claim against the Indemnitees for any service, selling, purchase or finder's fee or commission in connection with any Unit. The Lessee shall not be required to indemnify any Indemnitees under this Section 9.1 (a) in respect of such Indemnitee's willful misconduct or gross negligence; (b) except as otherwise provided herein with respect to the general administrative and overhead expenses incurred by the Lessor in connection with the transactions contemplated hereby; or (c) in respect of any claim for which indemnity is provided in Sections 9.2 and 9.3 or which would be provided except for exceptions to the general indemnity provisions thereof. All payments hereunder shall be made directly to the Indemnitees. The Lessee shall be obligated under this Section 9.1, irrespective of whether the Indemnitees shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnitees seeking to enforce the indemnification may proceed directly against the Lessee under this Section 9.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against an Indemnitee in connection with any claim indemnified against hereunder, the Lessee may and, upon the Indemnitee's reasonable request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by the Indemnitees, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by the Indemnitees in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 9.1, the Lessee shall pay or cause to be paid to the Indemnitees an amount which, after deduction of all taxes required to be paid by the Indemnitees in respect of the receipt thereof under the laws of any federal, state or local government or governmental subdivision (after giving credit for any savings in respect of any such taxes by reason of deductions, credit allowances in respect of the payment of the expense indemnified against, and of any other such taxes as reasonably determined in the sole discretion of the Indemnitees), shall be equal to the amount of such payment. The Lessee and the Indemnitees each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnitees for the full payment of, any indemnities as contained in this Section 9.1 by the Lessee, the Lessee shall be subrogated to any right the Indemnitees in respect of the matter against which indemnity has been given and any payments received by the Indemnitees from any person (except the Lessee) as a result of any matter with respect to which the Indemnitees has been indemnified by the Lessee pursuant

to this Section 9.1 shall be paid over to the Lessee for indemnification payments previously made in respect of such matter; provided that if any Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, then any such payments shall be retained by the Lessor as security for the Lessee's obligations under the Lease and its other Basic Agreements and shall be applied to any of such obligations which remain unpaid until such time as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, is continuing, at which time any of such amounts not so applied shall be paid over to the Lessee.

The Lessee further agrees to indemnify, protect and hold harmless the Indemnitees from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against any of them because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Manufacturer or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Manufacturer which infringes or is claimed to infringe on any patent or other right.

The indemnities contained in this Section 9.1 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, the Indemnitees and their successors and assigns. None of the indemnities in this Section 9.1 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Indemnitees therefor, from or under the Indemnitees, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

9.2. General Tax Indemnity. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand to indemnify and hold the Lessor harmless from, all fees (including, without limitation, documentation, license and registration fees), taxes (including, without limitation, income, gross receipts, franchise, capital stock, sales, use, value added, property [real or personal, tangible or intangible], and stamp taxes), assessments, fees, levies, imports, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon (except such penalties, fines, or additions to tax or interest, which are the result of the willful misconduct of the Lessor), howsoever imposed, whether levied or imposed upon the Lessor, the Lessee, the Equipment or any Unit, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes") upon or with respect to: (a) any Unit or any part thereof; (b) the manufacture, purchase, acceptance, rejection, ownership, delivery, non-delivery, transport, maintenance, repair, sale, leasing, possession, use, operation, transfer of title, return, abandonment or other disposition thereof; (c) the rentals, receipts or earnings arising therefrom; (d) any of

the Basic Agreements; (e) any payment made pursuant to any Basic Agreement; or (f) otherwise in connection with any of the transactions contemplated by any Basic Agreement, excluding, however (i) Taxes imposed on or measured solely by the income or excess profits of the Lessor or franchise taxes or capital stock taxes which are payable to the United States or to the state or political subdivision thereof in which the Lessor has its principal place of business or is incorporated or to any other state or political subdivision thereof where the Lessor is subject to income, excess profits, franchise or capital stock taxes, as the case may be, as the result of transactions unrelated to the transactions contemplated herein, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease the payment of which is specifically provided for elsewhere in this Lease, (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Lessor or any transfer of disposition by or on behalf of the Lessor resulting from bankruptcy or other proceedings for the relief of creditors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, but not excluding Taxes, other than Taxes imposed on or measured solely by the net income of the Lessor or franchise taxes or capital stock taxes, if such transfer or disposition is in connection with a Casualty Occurrence or a termination pursuant to Section 17 of this Lease, or an Event of Default shall have occurred and be continuing, and (iii) any Taxes imposed on or for the account of the Lessor by any foreign government or any subdivision or taxing authority thereof which are currently utilized by the Lessor, in accordance with the terms of the last sentence of this paragraph, as a credit against the United States income tax otherwise payable by the Lessor, provided that the Lessee shall not be required to pay any Taxes during the period it may be contesting or causing to be contested the same in the manner provided in this Section 9.2. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of Section 1504 of the Code, of which the Lessee is a member) under the laws of the United States or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a Lien upon any Unit, provided that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith (after written notice to the Lessor) by appropriate legal proceedings if the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the rights of the Lessor in or to the Equipment or otherwise under any Basic Agreement and adequate reserves have been provided by the Lessee for the payment of such tax to the extent required by generally accepted accounting principles. For purposes of this paragraph, in determining the order in which the Lessor utilizes withholding or other foreign taxes as a credit against the Lessor's United States income taxes, the Lessor shall be deemed to utilize (i) first, all foreign taxes other than those described in clause (ii) below; provided, however, that such other foreign taxes which are carried back to the taxable year for which a determination is being made pursuant to this sentence shall be deemed utilized after the foreign taxes described in clause (ii) below, and (ii) then, on a pro rata basis, all foreign taxes (including Taxes hereunder) with respect to which the Lessor is entitled to obtain indemnification pursuant to an indemnification provision contained in any lease or any participation or other agreement relating to a lease (including this Lease).

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this Section 9.2 shall be an amount sufficient to restore the Lessor to the same after-tax position such Lessor would have been in had such Taxes not been imposed.

If a written claim is made against the Lessor for any Taxes indemnified against under this Section 9.2, the Lessor shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor shall, upon receipt of indemnity satisfactory to it for all costs, expenses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest (except such penalties, fines, or additions to tax or interest, which are the result of the willful misconduct of the Lessor), and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes. The Lessor shall, in its sole discretion, select the forum for such contest and determine whether any such contest of the validity, applicability or amount of such Taxes shall be by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor in any such proceedings or action) without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. If the Lessor shall determine that any such contest shall be by paying such Taxes and seeking a refund thereof, the Lessee shall pay to the Lessor the amount of such Taxes paid by the Lessor. If the Lessor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, the Lessor shall pay to the Lessee the amount of such refund or interest net of expenses; provided that if any Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, then any such payments shall be retained by the Lessor as security for Lessee's obligations under the Lease and its other Basic Agreements and shall be applied to any of such obligations which remain unpaid until such time as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, exists, at which time any of such amounts not so applied shall be paid over to Lessee.

In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 9.2 or arising out of this Section 9.2, the Lessee shall make or cause to be made such report or return, or, except in the case of obligations resulting from the second sentence of the first paragraph of this Section 9.2, shall promptly notify or cause to be notified the Lessor of such requirement and if requested in writing by the Lessor shall make or cause to be made such report or return in such manner as shall be satisfactory to the Lessor. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

Payments due from the Lessee under this Section 9.2 shall be made directly to the Lessor, except to the extent paid to a governmental agency or taxing authority.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Lessor reasonably may require to permit compliance with the requirements of any taxing authorities.

9.3. Special Income Tax Indemnity.

(a) This Lease is being entered into on the assumption that the Lessor will realize the full benefit of the following assumptions in computing its Federal, state and local income tax liability.

(i) The Equipment will constitute "new section 38 property" within the meaning of Section 48(b) of the Code, and an investment tax credit will be allowable for Federal income tax purposes in an amount not less than 10% of the Purchase Price. (The assumed credit described in this clause (i) is hereinafter called the "Investment Credit");

(ii) If the Lessor elects a reduced Investment Credit pursuant to Section 48(q)(4) of the Code with respect to a Unit, Lessor will be entitled for its taxable year ending December 31, 1985 to an investment credit in respect of such Unit equal to 8 percent of Purchase Price of such Unit;

(iii) For federal income tax purposes in the hands of the Lessor each Unit will constitute "recovery property" and "5 year property" within the meaning of Section 168 of the Code, and the Lessor will be entitled to accelerated cost recovery deductions under Section 168(b)(1) of the Code with respect to each Unit equal to 15 percent of Lessor's Cost in its taxable year ending December 31, 1985, 22 percent of Lessor's Cost in its taxable year ending December 31, 1986, and 21 percent of Lessor's Cost in each of its taxable years ending December 31, 1987, 1988 and 1989, respectively (the "ACRS Deductions");

(iv) For Federal, state and local income tax purposes, the Lessor will be entitled to amortize the Transaction Expenses paid by the Lessor pursuant to Section 25 hereof (to the extent not includable in the Lessor's adjusted basis for the Equipment for the purpose of calculating the ACRS Deductions ratably over the initial term of this Lease. (The assumed deductions described in this clause (iv) are hereinafter called the "Amortization Deductions.");

(v) For Federal, state and local income tax purposes, the Owner will not be required to include in its income prior to the end of the term of this Lease (unless entitled to an equal deduction therefor in the same taxable year) any part or all of the cost, with



respect to the Equipment, of any (A) repairs or maintenance, (B) alterations, modifications, improvements or additions or (C) other expenditures by the Lessee with respect to the Equipment or the negotiation, documentation and execution of the Basic Agreements, whether incurred under and pursuant to the terms of the Basic Agreements or otherwise. (Any amount so included in income is hereinafter called a "Taxable Expenditure.")

The Lessee has therefore agreed to indemnify the Owner as hereinafter provided in this Section 9.3 in the event that such tax benefits are not available to the Lessor on and after the Closing Date.

(b) Investment Credit. If as a result of any of the circumstances set forth in Section 9.3(d) hereof, (i) the Lessor shall not be entitled to any portion or all of the Investment Credit or (ii) the Lessor shall lose the full benefit of, or have recaptured, any portion or all of the Investment Credit due to the recomputation of such Investment Credit pursuant to Section 47 of the Code, then the Lessee shall pay the Lessor, upon demand, the sum of (A) the amount of the Investment Credit which the Lessor shall have so lost, had recaptured or failed to receive; (B) the amount of any interest (net of any actual decrease in Federal, state or local income taxes caused by any allowable deduction of such interest from taxable income) or penalties, including any additions to tax due to the underpayment of estimated taxes, assessed against the Lessor in connection therewith; and (C) the amount of any Federal, state or local income taxes required to be paid by the Lessor in respect of the receipt of amounts referred to in clauses (A) and (B) above and this clause (C). If at any subsequent time the Lessor receives a refund with respect to any portion or all of the Investment Credit that it previously lost, had recaptured or failed to receive and for which payment has been made to the Lessor by the Lessee pursuant to this Section 9.3(b), then promptly after receipt of such refund the Lessor shall pay the Lessee the sum of (1) all amounts received by the Lessor from the Federal government with respect to such refund allowance, including interest, reduced by all Federal, state or local income taxes required to be paid by the Lessor in respect of the receipt thereof, and (2) the amount of any Federal, state or local income taxes saved by the Lessor in respect of its payments to the Lessee of amounts specified in clause (1) above and this clause (2).

(c) Depreciation and Amortization Deductions. If the Lessor, in computing its taxable income for Federal, state or local income tax purposes, shall as a result of any of the circumstances set forth in Section 9.3(d) hereof lose the full anticipated benefit of or the right to claim or shall have disallowed or recaptured all or any portion of the ACRS Deductions or the Amortization Deductions, then, upon notification thereof by the Lessor, the Lessee shall pay the Lessor as Additional Rent, (A) on the next succeeding Rent Payment Date (or within 30 days after such notification if such loss, disallowance or recapture occurs after the expiration of the Lease), with respect to all taxable years ending on or before such Rent Payment Date, and (B) on each succeeding Rent Payment Date during the initial lease term (including such next succeeding Rent Payment Date referred to in clause (A) above), an amount which, after deduction of all Federal, state and local income taxes required to be paid by the Lessor in respect of the receipt

thereof, shall be sufficient to yield the Lessor the same after-tax yield and periodic recovery of net cash flows as would have been realized by the Lessor in respect of the Lease if such loss, disallowance or recapture had not occurred. In addition, the Lessee shall also pay the Lessor, upon demand, an amount which, after deduction of all Federal, state and local income taxes required to be paid by the Lessor in respect of the receipt thereof, shall be equal to the amount of any interest (net of any actual decreases in Federal, state or local taxes caused by any allowable deduction of such interest from taxable income) or penalties, including any additions to tax due to the underpayment of estimated taxes, assessed against the Lessor in connection with such disallowance. If any indemnity payments are made to or for the benefit of the Lessor pursuant to this Section 9.3(c), the Lessor shall in good faith use its best efforts to gain the benefit of any reductions in its Federal, state or local income taxes in other taxable years that are predicated upon the adjustments giving rise to such earlier indemnity payments, and as and when the Lessor realizes a reduction in its Federal, state or local income taxes in a subsequent taxable year as a result of an adjustment consistent with and predicated upon, the Federal, state or local tax adjustments giving rise to such earlier indemnity payments, the Lessor shall, so long as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, pay to the Lessee (x) an amount equivalent to the tax reduction actually realized, and (y) the amount of any taxes saved by the Lessor in respect of its payment to the Lessee of amounts referred to in clause (x) above and this clause (y); provided, however, that the sum of all payments to be made by the Lessor to the Lessee shall not exceed the sum of such prior indemnity payments to the Lessor by the Lessee.

(d) Covered Circumstances. The Lessee shall be required to pay the Lessor the amounts provided for in Sections 9.3(b) and 9.3(c) only if the loss of the Investment Credit, the ACRS Deductions, or the Amortization Deductions, as the case may be, shall occur as a result of any one or more of the following events:

(i) any representation or warranty of the Lessee contained in, or made pursuant to, this Lease or any of the other Basic Agreements being incorrect or inaccurate;

(ii) any breach by the Lessee or any affiliate, agent or employee of the Lessee of any representation, warranty, covenant or agreement made by the Lessee in this Lease or any of the other Basic Agreements;

(iii) any act of, or failure to act by, the Lessee or any affiliate, agent or employee of the Lessee or any sublessee or any other Person (other than the Lessor or the Owner) in possession of the Equipment;

(iv) any incomplete, incorrect or inaccurate information being furnished to the Lessor by the Lessee or any affiliate, agent or employee of the Lessee, including any misstatement, omission or information or defect of any written statement, opinion or report

furnished by the Lessee or by any affiliate, agent or employee of the Lessee to the Lessor with respect to the nature, function, cost or intended use of the Equipment, or with respect to the nature of the materials and support facilities necessary for the efficient commercial operation of the Equipment throughout its projected economic life; or

(v) any latent or other defect in the Lessor's title to the Equipment;

provided, however, that such amounts shall not be payable to the extent that the Investment Credit, the ACRS Deductions, or the Amortization Deductions are lost, unavailable, disallowed or recaptured as a direct result of the occurrence of any Event of Loss if the Lessee shall have paid to the Lessor the amounts provided for in Section 10.1 or Section 10.3 of the Lease, to the extent that such payment reimburses the Lessor for amounts otherwise payable to the Lessor pursuant to this Section 9.3.

(e) Taxable Expenditures. If for any reason there are any Taxable Expenditures that are required to be included in the gross income of the Lessor for Federal, state or local income tax purposes at any time, then the Lessee shall pay the Lessor, upon demand, the sum of (i) the amount of any increase in its Federal, state and local income taxes resulting from the inclusion of such Taxable Expenditure in the gross income of the Lessor, (ii) the amount of any interest (net of any actual decrease in Federal, state or local income taxes caused by any allowable deduction of such interest from taxable income) or penalties, including any additions to tax due to the underpayment of estimated taxes, assessed against the Lessor in connection therewith, and (iii) the amount of any Federal, state or local income taxes required to be paid by the Lessor in respect of the receipt of amounts specified in clauses (i) and (ii) above and this clause (iii). If at any subsequent time the Lessor receives a refund with respect to any portion or all of the amount of any such increase in Federal, state or local income taxes, then promptly after receipt of such refund the Lessor shall pay the Lessee the sum of (1) all amounts received by the Lessor from the Federal, state or local government, as the case may be, with respect to such refund allowance, reduced by all Federal, state or local income taxes required to be paid by the Lessor in respect of the receipt thereof, and (2) the amount of any Federal, state or local income taxes saved by the Lessor in respect of its payment to the Lessee of amounts referred to in clause (1) above and in this clause (2). If any indemnity payments are made to the Lessor pursuant to this Section 9.3(e), as and when the Lessor realizes a present or future tax benefit as a direct result of the inclusion in such Lessor's gross income in a prior taxable year of all or part of any Taxable Expenditures as to which such indemnity payments were made, so long as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing, the Lessor shall pay to the Lessee (x) an amount equivalent to the tax benefit actually realized, and (y) the amount of any taxes saved by the Lessor in respect of its payment to the Lessee of amounts referred to in clause (x) above and this clause (y); provided, however, that the sum of all payments to be made by the Lessor to the Lessee shall not exceed the sum of such prior indemnity payments to the Lessor by the Lessee.

(f) Contest of Claims. If the Internal Revenue Service or any state or local income tax authority formally proposes in writing to require one or more adjustments with respect to any income tax return filed by or in respect of the Lessor, which adjustments, if successful, would result in a loss of a tax credit or deduction or an increase in the gross income of the Lessor under circumstances that would require the Lessee under this Section 9.3 to indemnify the Lessor for such loss or for any net increase in the Lessor's gross income, the Lessor shall notify the Lessee promptly of such claim, shall forbear payment of the tax claimed for at least 30 days after giving such notice if such forbearance is permitted by law, shall advise the Lessee of all action taken or proposed to be taken by the Internal Revenue Service or by such state or local income tax authority, and, if the Lessee shall within 30 days after such notice request that any such proposed adjustment be contested and furnish the Lessor with an opinion of independent tax counsel (who may be the Lessee's regular outside counsel) reasonably satisfactory to the Lessor to the effect that there exists a meritorious basis for contesting such proposed adjustment, shall contest such proposed adjustment in good faith, subject, however, to the following conditions: (i) the Lessor need not undertake administrative proceedings beyond the level of an auditing agent with respect to any such proposed adjustment; (ii) the Lessor must contest any such proposed adjustment beyond the level of administrative proceedings only if reasonably requested to do so by the Lessee (except that, if so requested, the Lessor may decline to contest such proposed adjustment or terminate such contest at any time in its sole discretion, in which case the Lessee's obligation to indemnify with respect to such proposed adjustment shall, except in the cases set forth in clause (v) below or in the proviso there following, terminate; (iii) the Lessor may determine the court of competent jurisdiction in which to contest such proposed adjustment; (iv) although the Lessor will keep the Lessee informed as to the progress of such litigation and will consult with the Lessee's counsel, if requested, the conduct of such litigation shall remain within the sole discretion of the Lessor and its tax counsel, whose decisions may take into account the overall tax interests of the Lessor; and (v) the Lessor shall not be required to undertake judicial proceedings if the proposed adjustment relates to tax payments of less than \$100,000 (and for this purpose any proposed adjustment that relates to an issue that could affect more than one taxable year shall be treated as involving the total potential undiscounted payments, taking into account all taxable years to which the proposed adjustments could relate) or if the proposed adjustment relates solely to (1) the allocation of basis among different items of depreciable property being depreciated over the same useful life or (2) the taxable year in which any credit or deduction is properly allowable if it is recognized that the credit or deduction is allowable for a prior taxable year that is still open and that the appropriate tax returns will be amended to claim such credit or deduction; and provided that the Lessor shall not be required to take any action pursuant to this sentence unless and until (A) the Lessor shall have determined that the action to be taken will not result in the danger of sale, forfeiture or loss of, or the creation of a Lien on, the Equipment or any interest therein, and (B) the Lessee shall have indemnified the Lessor in a manner satisfactory to the Lessor for any liability or loss which the Lessor may incur as a result of contesting the proposed adjustment and shall have agreed to pay the Lessor on demand all costs and expenses that the Lessor may incur in connection with

contesting such proposed adjustment, including, without limitation (w) reasonable attorneys', accountants', engineers' and like professional fees and disbursements, (x) the reasonable fees and expenses of attorneys in the regular employ of the Lessor, (y) the amount of any interest or penalty that may be payable as a result of contesting such proposed adjustment, and (z) if the Lessor shall elect to contest such proposed adjustment by paying the tax claimed (including such other amounts payable as interest, penalties or additions in respect of such tax) and seeking a refund, interest at the prime commercial loan rate of Citibank, N.A. as in effect from time to time, on the amount of such tax (including such other amounts payable as interest, penalties or additions in respect of such tax) computed from the date of payment thereof to the date the Lessee reimburses the Lessor for the tax and other amounts so paid, such interest to be payable in appropriate installments on each Rent Payment Date. Upon receipt by the Lessor of a refund of any tax and other amounts so paid by it and in respect of which the Lessee has paid such interest to the Lessor while payment of such tax and other amounts was contested by the Lessor, so long as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the amount of any interest paid or credited to the Lessor in respect of such refund shall be paid to the Lessee forthwith upon receipt. If the Lessee shall have made indemnification payments to the Lessor pursuant to this Section 9.3 in respect of the tax and other amounts so contested, then upon receipt by the Lessor of such refund, so long as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall pay to the Lessee forthwith the sum of (a) the amount of such refund, reduced by all taxes required to be paid by the Lessor in respect thereof and (b) the amount of any taxes saved by the Lessor in respect of its payment to the Lessee of amounts referred to in clause (1) above and this clause (2).

(g) Time of Payment. For the purposes of this Section 9.3 the obligation of the Lessee to make indemnification payments to the Lessor with respect to a loss of tax benefits, or with respect to an increase in tax liability resulting from any Taxable Expenditure, shall commence upon the earlier to occur of (i) if the Lessee does not request that the Lessor contest the proposed adjustments, the expiration of the 30-day period specified in Section 9.3(f) hereof and (ii) the delivery to the Lessee by the Lessor of a notice stating that the Lessor intends to make payment to the Internal Revenue Service or any state or local taxing authority, as the case may be, of any tax resulting from such loss, disallowance or recapture of the Investment Credit, the ACRS Deductions, or the Amortization Deductions, or the inclusion in gross income of such Taxable Expenditure. Any amount payable to the Lessor in accordance with this Section 9.3 shall be payable on the Lessee's receipt of the Lessor's invoice therefor. Each such invoice shall be accompanied by a statement from an officer of the Lessor, certifying that he has examined the determination of the amount due and that, in his opinion such amount has been properly calculated pursuant to this Section 9.3, and the Lessee hereby agrees that it will not have the right to inspect the tax returns or any other documents of the Lessor or of any affiliate of the Lessor in order to confirm the good faith and reasonableness of the calculations made by the Lessor pursuant to this Section 9.3 or any determination made by the Lessor pursuant

to this Section 9.3, provided that upon written request by the Lessee, the Lessor shall deliver a certificate of a Senior Officer confirming that the adjustments set forth in the written statement to which such request relates have been reviewed for accuracy by the internal auditors for the Lessor under the supervision of such Senior Officer and that the conclusions made by the Lessor, as set forth in such written statement, are accurate and in conformity with the provisions of this Section 9.3. For the purpose of calculating any amount due to be paid by the Lessee to the Lessor pursuant to this Section 9.3, the Lessor's combined effective tax rate for Federal, state and local income taxes shall be deemed to be the maximum statutory rates applicable to the Lessor as of December 31, 1985.

(h) "Lessor"; Survival. For the purposes of this Section 9.3, the term "Lessor" shall include the "common parent" and all other corporations included in the affiliated group (within the meaning of Section 1504 of the Code) of which the Lessor is or becomes a member. The provisions of this Section 9.3 shall survive the expiration or termination of this Lease and the other Basic Agreements.

(i) Covered Taxes. The Federal, state and local income taxes to which this Section 9.3 applies are those imposed by the United States or by the state or political subdivision thereof in which the Lessor has its principal place of business on the Closing Date.

(j) Coordination with Section 3.5. In determining any amount of Additional Rent payable pursuant to this Section 9.3, the "after tax yield and periodic recovery of net cash flows which would have been realized by the Lessor in respect of the Lease" shall be the "after tax yield and periodic recovery of net cash flows" determined based on the accuracy of the assumptions in Schedule C to the appropriate Lease Supplement before any increases in such after tax yield and periodic recovery of net cash flows realized by the Lessor because of adjustments in the Percentages pursuant to Section 3.5 of the Lease.

(k) Payments by Lessor to Lessee. Any payment which the Lessor would be required to pay to the Lessee pursuant to this Section 9.3 except for the fact that an Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing shall, unless the term of this Lease shall have been terminated pursuant to Section 21.2, be paid to the Lessee at such time as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall be in existence.

9.4. Survival; No Guaranty. The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to Section 9.1, 9.2 or 9.3 shall survive the expiration or other termination of this Lease. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of payment of the residual value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

## SECTION 10. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE.

10.1. Casualty Occurrences. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation by any governmental authority or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease (all such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease, or until such Unit shall have been returned in the manner provided in Section 20 or 22, the Lessee shall promptly and fully notify or cause to be notified (after the Lessee has knowledge of such Casualty Occurrence) the Lessor with respect thereto. On the Rent Payment Date next succeeding the delivery of such notice (or, in the event that the term of this Lease has already expired, on a date within 15 days of such delivery) the Lessee shall pay or cause to be paid to the Lessor an amount equal to all Basic Rent and Additional Rent in respect of such Unit due and payable on or prior to such date plus a sum equal to the Casualty Value of such Unit as of such date (such payment date being hereinafter called the "Calculation Date"). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

If the date upon which the making or causing to be made of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of the Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit, shall pay or cause to be paid interest thereon from the end of such term to the date of such payment at the rate of 15 3/4% per annum.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit or any component thereof, suffering a Casualty Occurrence before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to retain the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. If any such Event of Default or event has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Lessor, provided that if no declaration of default has occurred and is continuing and at such time as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, exists, the Lessor shall return all such proceeds up to the amount of the Casualty Value to the Lessee.

The "Casualty Value" of each Unit as of the Calculation Date for each such Unit shall be an amount equal to the product of the percentage set

forth in Schedule B to the appropriate Lease supplement hereto opposite such date (subject to adjustment as provided in Section 3.5) times the Purchase Price of such Unit.

In the event of the requisition for use of any Unit during the term of this Lease or any renewal thereof, unless such requisition shall constitute a Casualty Occurrence, all the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 20 or 22, as the case may be, promptly upon such return rather than at the end of the term of this Lease; but the Lessee shall in all other respects comply with the provisions of Section 20 or 22, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the requisitioning authority for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, provided that if an Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing such payments shall be paid over to or retained by the Lessor, (i) until such time as no Event of Default or event which with notice or lapse of time or both would constitute an Event of Default, is continuing, at which time the Lessor shall return all such payments to the Lessee or (ii) until a declaration of default has occurred and is continuing, at which time such payments shall be applied to Lessee's obligations hereunder. All payments received by the Lessor or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

Except as provided in this Section 10.1, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

10.2. Insurance. The Lessee agrees that it will at all times during the term of this Lease and at its own cost and expense keep each Unit insured under "All Risk" policies against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and as are satisfactory to the Lessor and in amounts not less than the Casualty Value of such Unit at any time and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, in such amounts as are customarily insured against by companies owning property of a similar character and in an amount satisfactory to the Lessor. Any such insurance may have applicable thereto deductible provisions in an amount no greater than \$500,000 per occurrence and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 10.2. All such property and casualty insurance shall provide that all proceeds shall be adjusted with the Lessee and the Lessor jointly, and shall be payable to the Lessor. All such liability insurance shall designate the Lessor and the Lessee, as additional insureds and shall be payable to the person or persons to whom the liability covered by



such insurance has been incurred. All such policies shall provide (a) that the insurer thereunder waives all rights of subrogation against the Lessor and the Lessee, (b) that no cancellation, termination or material change in such insurance shall be effective until at least 30 days after the receipt by the Lessor of written notice thereof, (c) that such insurance as to the interests of the Lessor therein shall not be invalidated by any act or neglect of, or violation of the terms, conditions or warranties of the insurance policy by, the Lessee or any other person or by the use or operation of the Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy, (d) that the Lessor shall not be liable for the payment of any premiums, commissions, assessments or calls in connection with such insurance, (e) that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liabilities for premiums (which shall be solely a liability of the Lessee), shall operate in the same manner as if there were a separate policy covering each such insured, without right of contribution from any other insurance which may be carried by an insured, and (f) that the insurer will undertake the legal defence of the Lessor. The Lessee shall furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section 10.2 shall be effected with insurance companies approved by the Lessor, which approval shall not be unreasonably withheld.

If no Event of Default, or any event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the proceeds of any insurance received by the Lessor on account of or for any loss or casualty in respect of any Unit shall be released to the Lessee either (x) upon a written application signed by the President, any Vice President or the Treasurer of the Lessee for the payment of, or to reimburse the Lessee for the payment of, the cost of repairing or restoring such Unit if it has been damaged (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair or restoration), or (y) if this Lease is terminated with respect to such Unit, promptly upon payment by the Lessee of the Casualty Value to the Lessor. If an Event of Default, or an event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall retain any such insurance proceeds until either the preceding sentence of this Section 10.2 becomes applicable or a declaration of default has occurred and is continuing, and thereafter shall apply such insurance proceeds as set forth in the preceding sentence of this Section 10.2.

10.3. Special Termination Event. If the Lessee shall notify the Lessor that the Lessor or any affiliate of the Lessor, by reason of (i) the legal or beneficial ownership of the Units or any portion thereof by the Lessor or (ii) the lease of the Units to the Lessee hereunder or (iii) any of the other transactions contemplated hereby or by any of the other Basic Agreements, is deemed by any governmental authority having jurisdiction to be, or has or will become subject to regulation as, an "electric utility" or a "public utility" or a "public utility holding company" under any law or governmental regulation, Federal, state or local, then on the date (the

"Purchase Date") which is the Rent Payment Date next succeeding the delivery of such notice, the Lessee shall purchase all the Units then subject to this Lease for a cash purchase price equal to the greater of (i) the Casualty Value of such Units as of such Rent Payment Date and (ii) the Fair Market Sale Value of such Units as of such Rent Payment Date. The Lessee shall also pay to the Lessor on the Purchase Date all Basic Rent and Additional Rent then due and payable hereunder. If on the Purchase Date, the Fair Market Sales Value has not as yet been determined, the Lessee shall pay to the Lessor on the Purchase Date the Casualty Value of the Units and, upon determination of the Fair Market Sales Value of the Units, the Lessee shall pay to the Lessor the amount, if any, by which such Fair Market Sales Value exceeds such Casualty Value. Upon receipt of the amounts payable by the Lessee on the Purchase Date, the Lessor shall transfer title to the Units to the Lessee "as-is, where-is", without representation or warranty, express or implied, by the Lessor and without recourse to the Lessor, and the term of this Lease shall terminate.

#### SECTION 11. REPORTS; INSPECTION.

On or before March 31 in each year, commencing with the calendar year 1986, the Lessee will furnish or cause to be furnished to the Lessor an accurate statement in appropriate form (a) setting forth as at the preceding December 31 the amount, description and number of all Units then leased hereunder, the amount, description and number of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 5 have been preserved or replaced. The Lessor shall have the right (but not the duty) by their respective agents to inspect the Units and the Lessee's and its agents' records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease, provided that the Lessee shall not be liable, except in the case of its negligence or misconduct or that of its employees or agents, for any injury or death to any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted hereunder.

The Lessee agrees at its expense to prepare and deliver or cause to be prepared and delivered to the Lessor, within a reasonable time prior to the required date of filing (and, to the extent permissible, file on behalf of the Lessor) any and all reports in appropriate form (other than income or franchise tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

SECTION 12. DISCLAIMER OR WARRANTIES; COMPLIANCE WITH LAWS AND RULES;  
MAINTENANCE; ALTERATIONS

12.1. Disclaimer of Warranties. THE LESSOR HAS NOT MADE NOR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Lessor, on the one hand, and the Lessee on the other, are to be borne by the Lessee except that the Lessor warrants that it has received and holds whatever title to the Units as was conveyed to it by the Manufacturer. The Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Manufacturer, provided that if at any time an Event of Default, or any event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessor may assert and enforce for the Lessor's sole benefit, but at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

12.2. Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving any Unit may extend, with the interchange rules of the Association of American Railroads and with all rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction of the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that any such law, rule or regulation requires any alteration, replacement, modification or addition of or to any Unit or any part thereof, the Lessee will fully comply therewith at its own expense, provided that the Lessee may upon written notice

to the Lessor, in good faith contest or cause to be contested the validity or application of any such law, rule or regulation in any reasonable manner which does not, in the opinion of the Lessor adversely affect the property or rights of the Lessor under this Lease.

12.3. Maintenance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any Additions thereto) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted. Each Unit will be consistently maintained in accordance with applicable railroad interchange rules and Federal and Railroad Safety Standards. Maintenance procedures will conform to any conditions set forth in the Manufacturer's warranties during the term of such warranties. The term "ordinary wear and tear" for purposes of this Lease shall mean that wear and tear which would have been suffered by units of the same type which had carried at all times, and over the same period of time, commodities of the kind ordinarily carried in the Units by the Lessee. The Lessee agrees that it will not discriminate in any way in its maintenance procedures between any Unit subject to this Lease and any other unit owned or leased by it.

12.4. Alterations, etc. The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called "Additions") to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease, provided that no such Addition shall be made if, in the case of an alteration or modification was made or, in the case of an addition, the addition is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such Addition not been made, assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts incorporated in or installed as part of the Units shall at all times be and remain the property of the Lessor.

#### SECTION 13. PROHIBITED LIENS.

The Lessee will not directly or indirectly create or permit or suffer to be created or to remain, and, at its own expense, will promptly pay or discharge any and all Liens of the Equipment and will pay any sums claimed by any person which, if unpaid, might become a Lien upon or with respect to any Unit or any part thereof or the interest of the Lessor or the Lessee

therein or herein, other than Permitted Liens, and will promptly discharge any such claim or Lien which arises, but shall not be required to pay or discharge any such claim or Lien so long as (i) the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner, (ii) prompt notice of such contest is given to the Lessor and (iii) the nonpayment or non-discharge of such claim or Lien does not, in the reasonable opinion of the Lessor, materially adversely affect the interest of the Lessor in or to the Equipment or proceeds thereof, the Lessor's interest in the income and proceeds from the Equipment, or any other rights of the Lessor under this Lease or any Security Document or Basic Agreement and (iv) adequate reserves have been provided by the Lessee for the payment or discharge of such claim or Lien to the extent required by generally accepted accounting principles.

#### SECTION 14. POSSESSION AND USE; ASSIGNMENT AND SUBLEASES.

The Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease. Except as permitted by this Section 14, the Lessee shall not assign or transfer its rights hereunder or sublease or part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units.

So long as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, this Lease does not prohibit the use of the Equipment by others in the usual interchange of traffic, but the Lessee will under no circumstances permit any Unit to be assigned to service, or to be operated or maintained, outside the United States of America. The Lessee will not sublease any of the Units without the prior written approval of the Lessor, except that the Lessee may sublease all of the Units for a period not exceeding 18 months without such approval if at the end of the original term of such sublease such Units will no longer be subject to any sublease. Notwithstanding the foregoing, no sublease for any period shall be permitted unless (i) no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing at the commencement of the term of such sublease, (ii) all of such Units are subleased to the same sublessee for use in a single unit train or in multiple unit trains, all of which are operated in one service by the sublessee; in either case in the same manner as contemplated by the Lessee at the commencement of the term of this Lease, (iii) such sublease specifically provides that it is subject and subordinate to the provisions of this Lease and the rights and remedies of the Lessor hereunder, and (iv) such sublease does not adversely affect the Lessor's ability to realize the full benefits of the tax assumptions set forth in Section 9.3 or jeopardize the Lessor's interests in the Units. No sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety.

## SECTION 15. ASSIGNMENT.

(a) This Lease shall not be assigned by the Lessor, by operation of law or otherwise, without the prior written consent of the Lessee, except that the Lessor may, without the prior written consent of the Lessee, and at no cost or expense to the Lessee, assign all or any part of its interest in this Lease or the Units to (i) any Affiliate of the Lessor, (ii) any commercial or mutual savings bank, savings and loan association, trust company, life or casualty insurance company, credit company or other leasing or financial institution which has combined capital and surplus of at least fifty million dollars (\$50,000,000), is organized under the laws of the United States or a state thereof, conducts substantially all of its business and has substantially all of its property within the United States, and has no interlocking director with the Lessee, and (iii) any assignee under any agreements or instruments pursuant to which Lessor borrows money and secures such loan by this Lease (the "Security Documents"), if the Security Documents include a "quiet enjoyment" clause for the benefit of the Lessee; provided that, in the case of an assignee described in clause (i) or (ii) hereof, (x) such assignee shall have assumed in writing (and, in the case of clause (ii), released the Lessor from) all of the Lessor's rights, benefits, duties and obligations under this Lease and all other documents and instruments entered into by the Lessor in connection with the transactions contemplated hereby, and (y) no such assignment shall knowingly (after reasonable inquiry) be made to any Person which would create a prohibited transaction within the meaning of the Employee Retirement Income Security Act of 1974, as amended; and provided, however, that no such assignment shall adversely affect the rights and benefits, or materially increase the burdens or obligations, of the Lessee hereunder. The Lessee hereby agrees, in connection with any assignment or contemplated assignment described in clause (iii) above, at the expense of the Lessor, to execute and deliver an acknowledgement thereof and all such other documents and instruments (including, without limitation, opinions of counsel and officers' certificates regarding this Lease and the Units), and to cooperate generally and in such other ways as Lessor may reasonably request.

(b) If the Lessee shall receive written notice of the assignment of the Lease or any interest in the Units by the Lessor to any assignee pursuant to Section 15(a) hereof, the Lessee hereby agrees as follows:

(i) To make each payment of Basic Rent assigned thereby directly to the assignee at the address specified in such notice until the Lessee receives a further written notice from the assignee as to the termination, expiration or cancellation of such assignment or of any subsequent assignment.

(ii) Not to seek to recover any payment of Basic Rent, Casualty Value or any payment measured with reference to Termination Value made to the assignee once such payment is made.

(iii) That, so long as such assignment remains in effect, all rights of the Lessor with respect to this Lease, with the exception of any rights to indemnification to which the Lessor may be entitled hereunder (which rights shall remain exercisable by the Lessor), shall be exercisable by the assignee.

(iv) At the expense of the Lessor, to execute and deliver such other documents as the Lessor may reasonably request.

#### SECTION 16. MERGER, CONSOLIDATION, ETC.

The Lessee may assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, in compliance with the requirements of Section 12.3 of the Participation Agreement, dated as of June 1, 1981, with the Wilmington Trust Company, as Trustee, and the other parties named therein.

#### SECTION 17. EARLY TERMINATION.

In the event that all of the Units shall become surplus to the Lessee's requirements or economically unserviceable for use by the Lessee (as determined in good faith by the Lessee's Board of Directors) from any cause whatsoever (other than a Casualty Occurrence), the Lessee may, at its option, if no Event of Default shall have occurred and be continuing, give to the Lessor notice of the Lessee's intention to terminate this Lease as to all of the Units subject to this Lease as of the Rent Payment Date stated in such notice (herein called the "Termination Date"), which Rent Payment Date shall not be earlier than 180 days after the date of such notice nor earlier than the twenty-second Rent Payment Date. During the period from the giving of such notice until the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain cash bids (pursuant to invitations for bids reasonably satisfactory in form and substance to the Lessor) for the purchase of such Units. The Lessor shall also have the right to obtain cash bids for the purchase of such Units, either directly or through agents other than the Lessee. The Lessee shall certify to the Lessor in writing the amount of each bid, if any, received by the Lessee and the name and address of the person submitting such bid.

If no such bids are received by the tenth Business Day prior to the Termination Date or if the Lessee shall elect not to sell such Units despite the receipt of such bids, the Lessee shall notify in writing the Lessor of such fact and shall withdraw its notice of termination. Otherwise, on the Termination Date the Lessor shall, subject to satisfaction of the conditions specified in the following sentence, sell such Units for cash to the maker (who shall not be the Lessee or any affiliate of the Lessee) of the highest cash bid therefor submitted prior to such date (whether such bid has been so certified by the Lessee or obtained by the Lessor independently of the efforts of the Lessee), such sale to be on an "as-is, where-is" basis, without any representation or warranty, express or implied, by the Lessor and without recourse to the Lessor. The Lessor's obligation to sell such Units shall be subject to the conditions that: (i) no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing on, and the Lessee shall have paid to the Lessor all Basic Rent and Additional Rent payable hereunder on or before, the Termination Date, and (ii) the Lessee shall, on or before the Termination

Date, have paid to the Lessor the amount, if any, by which the Termination Value, determined as of the Termination Date, exceeds the amount of cash received by the Lessor for such sale less all expenses (including legal fees and expenses) incurred or paid by the Lessor in connection with such sale.

Upon the closing of the sale of such Units by the Lessor pursuant to the preceding paragraph, (i) the Lessee shall comply with the provisions of Section 20 with respect to such Units, (ii) the obligation of the Lessee to pay Basic Rent hereunder shall cease with respect to such Units, and (iii) the term of the Lease with respect to such Units shall end on the Termination Date. If the Lessee withdraws any notice of termination given pursuant to the first paragraph of this Section 17 or if for any reason (other than the failure of the Lessor to tender a bill of sale) no sale shall be made pursuant to any such notice of termination, the Lessee shall not be obligated to pay the amount set forth in clause (ii) of the preceding paragraph and this Lease shall continue in full force and effect with respect to such Units, but the Lessee may at any time or from time to time thereafter give a further notice or notices of termination with respect to the Units under this Section 17, provided that no such further notice of termination may be given until 365 days shall have elapsed since the giving of the previous notice of termination. The Lessor shall not be under any duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids, or otherwise to take any action in connection with any such sale except as expressly provided in the preceding paragraphs of this Section 17. In the event of the sale of the Units pursuant to this Section 17, the Lessee shall not thereafter acquire directly or through any affiliate of the Lessee any interest in any of the Units as owner or lessee.

The Termination Value ("Termination Value") of each Unit as of the Termination Date shall be an amount equal to the product of the percentage set forth in Schedule B to the appropriate Lease Supplement opposite such date (subject to adjustment as provided in Section 3.5) times the Purchase Price of such Unit.

#### SECTION 18. RENEWAL OPTION.

So long as no Event of Default has occurred and is continuing, the Lessee may renew this Lease as to all of the Units subject to this Lease on September 30, 1999 for one or more renewal periods, the first of which shall commence on October 1, 1999, each period having a term of one or more years (as shall be specified by the Lessee), provided that this Lease may not be renewed for a period ending after September 30, 2007. The Lessee shall give the Lessor at least 12 months' prior written notice of each renewal (specifying the term of such renewal), which notice shall be irrevocable. All of the provisions of this Lease shall be applicable during each renewal period, except that the Basic Rent for such renewal period shall be in an amount equal to the Fair Market Rental Value of the Units, as of the first day of such renewal period, for a period equal to such renewal period, and shall be payable in semiannual installments in arrears.



#### SECTION 19. PURCHASE OPTION.

If the Lessee has renewed this Lease for the maximum period permitted by Section 18 and if no Event of Default shall have occurred and be continuing, the Lessee shall have the option to purchase all of the Units on the last day of the final renewal period (such day being hereinafter called the "Expiration Date") at a price which shall be equal to the Fair Market Sales Value of the Units purchased at such time. In order to exercise such right to purchase such Units, the Lessee shall give the Lessor written notice of its election to purchase such Units (which notice shall be irrevocable) at least 180 days prior to the Expiration Date. The Fair Market Sales Value of the Units shall be determined by mutual agreement of the Lessee and the Lessor within 45 days after receipt by the Lessor of the notice from the Lessee of its election to purchase such Units or, if they shall fail to agree within such 45-day period, the Fair Market Sales Value of such Units shall be determined by the Appraisal Procedure. The Lessee shall pay to the Lessor on or before the Expiration Date an amount equal to the Fair Market Sales Value of the Units being purchased, and upon such payment and the payment by the Lessee of all other Basic and Additional Rent payable on or before such Expiration Date (including the Basic and Additional becoming due and payable on such Expiration Date), the Lessor shall transfer all of its right, title and interest in the Units being purchased by the Lessee pursuant to this Section 19 to the Lessee without any representation, recourse or warranty on the part of the Lessor except that the Lessor shall warrant to the Lessee that the Units are free and clear of all Lessor's Liens.

#### SECTION 20. RETURN OF UNITS UPON EXPIRATION OF TERM.

On or prior to the termination of the term of this Lease with respect to any Units or as soon as practicable after the termination of the term of this Lease with respect to any Units and in any event not later than 90 days after the termination of the term of this Lease with respect to any Units (except in each case with respect to a termination pursuant to Section 10.1), the Lessee will cause each Unit to be transported to such storage tracks in the State of Louisiana as it shall designate immediately prior to such termination or, in the absence of such designation, as the Lessor may designate, and the Lessee will arrange for storage of such Unit on behalf of the Lessor at such storage tracks. Each Unit shall be stored for a period commencing on the date of its arrival at such storage tracks (whether designated by the Lessor or the Lessee) and extending thereafter to a date not later than 120 days from the date at which the last of such Units is placed in storage pursuant to this Section 20. The assembly, delivery and storage of such Units shall be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same. The Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the foregoing rights of inspection except in the case of negligence or willful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. This agreement to assemble, deliver and store the Units as hereinbefore provided is of the essence of this Lease, and

upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof. Each Unit returned to the Lessor pursuant to this Section 20 shall (a) be free and clear of all Liens (other than Lessor's Liens or Liens created pursuant to or under Security Documents) in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (b) have attached or affixed thereto all Parts and (c) comply with the interchange rules of the Association of American Railroads and with all rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit. If any Unit suffers a Casualty Occurrence during any storage period provided for in this Section 20, the Lessee shall pay to the Lessor the Casualty Value of such Unit in the amount and on the date required by Section 10. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Lessor except for amounts due to the Lessee pursuant to Section 10.1.

#### SECTION 21. DEFAULTS; REMEDIES.

21.1. Defaults. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(a) payment of any Basic Rent or payment in respect of any Casualty Occurrence pursuant to Section 10.1 or payment in respect of any termination of this Lease pursuant to Section 10.3 or 16 shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for five days after such payment is due; or

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof; or

(c) the Lessee shall fail to maintain insurance as required by Section 10.2; or

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Basic Agreements, and such default shall continue for 30 days after written notice from the Lessor specifying the default and demanding that the same be remedied; or

(e) any representation or warranty made in writing by the Lessee herein or in the Basic Agreements or in any statement or certificate furnished to the Lessor pursuant to or in connection with the Basic Agreements proves to be untrue in any material respect as of the date of issuance or making thereof and any other representation or warranty for the breach of which indemnity is provided under Section 9; or

(f) the Lessee shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing

against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (v) be adjudicated insolvent or be liquidated, or (vi) take corporate action for the purpose of any of the foregoing; or

(g) a court or governmental authority of competent jurisdiction shall enter an order (i) appointing, without consent by the Lessee, a custodian, receiver, trustee or other officer with similar powers with respect to the Lessee, or with respect to any substantial part of its property, and within 30 days after entry of such order such appointment shall not have been set aside or (ii) constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or (iii) ordering the dissolution, winding-up or liquidation of the Lessee; or if any petition referred to in clause (ii) above shall be filed against the Lessee and such petition shall not be dismissed within 30 days; or

(h) default shall be made in the payment of the principal or of interest on any indebtedness of the Lessee which default results or could result in indebtedness of an aggregate principal amount in excess of \$25,000 becoming immediately due and payable, unless such default is, in the Lessor's reasonable opinion, being contested in good faith and during the pendency of such contest such indebtedness shall not be required to be paid; or

(i) an event which constitutes an event of default under the lease between the Lessee and the assignee of Lessee's rights under the applicable Purchase Agreement with respect to the railroad equipment (other than the Equipment) referred to therein;

then the Lessor may exercise any of the remedies set forth in Section 21.2. The Lessee shall deliver to the Lessor, promptly upon any responsible officer's becoming aware of any condition which constitutes, or which with notice or lapse of time both would constitute, an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 21.1, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of such official's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

21.2. Remedies. If an Event of Default shall have occurred and be continuing, the Lessor, at its option, may by notice in writing to the Lessee terminate the term of this Lease with respect to all Units then subject thereto, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and henceforth hold, possess, sell, operate, lease to others and enjoy the

same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing accrued Basic Rent pro rata to such date) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify:

(x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in such case on the basis of a 8.5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or

(y) an amount equal to the excess, if any, of the Casualty Value as of the Rent Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time.

provided that in the event the Lessor shall have sold or leased any Unit as permitted by this Section 21.2, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding subparagraphs (x) and (y) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty.

(i) in the case of such sale, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rent Payment Date on or next preceding the date of termination, over the net proceeds of such sale, and

(ii) in the case of such leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Lessor reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to default, each such present value to be computed in each case

on the basis of a 8.5% per annum discount, compounded, in the case of rental which is estimated under Clause (II) of this subparagraph, semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity, including without limitation, the right of the Lessor to proceed by appropriate court action or actions at law or in equity or otherwise to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, whether before, during, or after an Event of Default hereunder.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit and the placing of any Unit in the condition necessary to meet the requirements of the second sentence of Section 22.

The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make such rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies; and a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Lessor.

## SECTION 22. RETURN OF UNITS UPON DEFAULT.

If the term of this Lease shall be terminated pursuant to Section 21 the Lessee shall forthwith deliver or cause to be delivered possession of the Units to the Lessor and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Lessor pursuant to this Section 22 shall (i) be free and clear of all Liens (other than Liens created pursuant to or under the Security Documents) in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) have attached or affixed thereto all Parts, and (iii) comply with the interchange rules of the Association of American Railroads, and with all rules of the United States Department of Transportation, the Interstate Commerce Commission and any other

legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) cause any or all of the Units to be transported to such location or locations as shall reasonably be designated by the Lessor and there assembled,

(b) furnish and arrange for the Lessor to store any or all of the Units on any lines of railroad or premises approved by the Lessor without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor, and

(c) cause any or all of the Units to be transported to such interchange point or points as shall be designated by the Lessor upon any sale, lease or other disposal thereof.

During any assembly, delivery or storage period the Lessee will, at its own cost and expense, maintain the insurance required by Section 10.2 of this Lease, maintain and keep each such Unit in good order and repair and will permit the inspection of the Equipment by the Lessor, the Lessor's representatives and prospective purchasers, lessees and users. This agreement to assemble, deliver and store the Equipment as hereinbefore provided is of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof. The Lessee hereby expressly waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any unit in any reasonable manner. In the event that the Units or any thereof are sold, the Lessee shall pay to the Lessor the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Lessor at the location specified in paragraph (a) above.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 22, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit as the time.

#### SECTION 23. RECORDING; FURTHER ASSURANCES.

The Lessee, at its own expense, will cause this Lease, the Basic Agreements, any sublease permitted by Section 14, and any other assignment or transfer hereof or thereof and any amendment or supplement hereto or thereto

to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 or such successor thereto as may then be in effect, to the full extent required to protect the rights intended to be created in the Lessor hereunder and thereunder.

The Lessee will cause to be done, executed acknowledged and delivered all such further acts, conveyances and assurances as the Lessor shall require for accomplishing the purposes of this Lease and the other Basic Agreements. Upon the expiration of the term with respect to any Unit for any reason, the Lessee will execute such assignments of warranties and other rights and interests of the Lessee relating to such Unit as the Lessor may request. The Lessee will take, or cause to be taken, such action with respect to the recording, filing, re-recording and re-filing of the Lease, the Basic Agreements, any sublease permitted by Section 14, and any other assignment or transfer hereof or thereof, or any amendments and supplements to any thereof, and any financings statements, continuation statements or other instruments (including, without limitation, any financing or other statements or instruments relating to a change of name or location by the Lessor or the Lessee), in such manner and in such places as is necessary, or as shall be deemed desirable by the Lessor to establish, perfect, preserve and protect the Lessor's rights and interests as owner of the Equipment and as lessor under this Lease and shall furnish to the Lessor evidence of all actions taken by it under this and the preceding sentences. The Lessee will furnish to the Lessor annually after the execution hereof (but not later than March 15th of each year), commencing with the year 1986, an opinion of counsel satisfactory to the Lessor stating either: (i) that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording and re-filing of this Lease, the Basic Agreements, any sub-lease permitted by Section 14, and any other assignment or transfer hereof or thereof (and any amendments or supplements to any thereof) and any financing statements or other instruments as is necessary to maintain the perfection of the security interests created thereby and the Lessor's rights and interest as owner of the Equipment and as lessor under this Lease and reciting the details of such action; or (ii) that in the opinion of such counsel no such action is necessary to maintain the perfection of such security interests or such rights and interests of the Lessor.

#### SECTION 24. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE.

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate of 15 3/4% per annum, shall be payable by the Lessee upon demand.

#### SECTION 25. NO RECOURSE.

No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Lessor or the Lessee,

whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

#### SECTION 26. EXPENSES.

Provided that no Default or Event of Default has occurred and is continuing hereunder, the Lessor hereby agrees to pay or cause to be paid, as and when due, all of the following fees and expenses (the "Transaction Expenses") in connection with the negotiation, preparation, execution and delivery of this Lease and all of the other documents contemplated hereby and otherwise incurred in connection with the transactions contemplated hereby: (a) the reasonable fees and disbursements of special counsel to the Lessor, (b) all costs and expenses incurred in printing and reproducing this Lease and all other documents contemplated hereby, and (c) all necessary recording and filing fees and stamp taxes; provided, however, if the transactions contemplated by this Lease are not consummated for any reason other than the breach or default of the Lessor, then Lessee shall pay all of the foregoing Transaction Expenses.

#### SECTION 27. NOTICES.

All notices, requests, demands and other communications required or contemplated by the provisions of this Lease shall, unless otherwise specified, be in writing or by telex or by telegraph, and shall be deemed to have been given or made on the fifth Business Day after deposit thereof in the United States mails, certified, first-class postage prepaid, or when received if sent by telex or telegraph or delivered by hand, addressed as follows:

To the Lessee:	Central Louisiana Electric Company, Inc. Post Office Box 111 Alexandria, Louisiana 71301 Attention: Chief Financial Officer
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To the Lessor:	Connell Finance Company, Inc. 45 Cardinal Drive Westfield, New Jersey 07092 Attention: Grover Connell President
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or as to any such party, or its assignee, to such other address as such party or assignee may from time to time specify by notice hereunder.



## SECTION 28. MISCELLANEOUS.

28.1. Waivers; Modifications. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought; no such instrument shall be effective unless a signed copy thereof shall have been delivered to the Lessor and the Lessee.

28.2. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

28.3. Binding Effect; Successors and Assigns. The terms and provisions of this Lease and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and (to the extent assignments are permitted by this Lease) assigns.

28.4. No Third Party Beneficiaries Except as Specified. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the parties to the Security Documents, if any, and their respective successors and assigns, each of which will be deemed to be a third party beneficiary hereof) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

28.5. Captions; References. The captions in this Lease and in the table of contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to sections and subdivisions without reference to the document in which they are contained are references to this Lease.

28.6. Governing Law. This Lease has been negotiated in, is being made and delivered in, and shall be governed by and construed in accordance with the laws of, the State of New Jersey, provided that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

[Seal]

CONNELL FINANCE COMPANY, INC.  
as Lessor

By: 

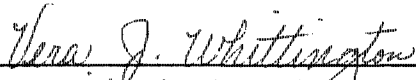
Attest:

[Seal]

CENTRAL LOUISIANA ELECTRIC COMPANY,  
INC., as Lessee

By: 

Attest:

  
assistant secretary

STATE OF LOUISIANA)

22.

PARISH OF RAPIDES )

On the 13<sup>th</sup> day of September, in the year 1985, before me personally came David M. Epples, to me known, who being by me duly sworn, did depose and say that he resides at Pineville, La., that he is Vice-President of Central Louisiana Electric Company, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

James D. Williams  
Notary Public  
my commission expires  
at death

STATE OF NEW JERSEY)

55. :

COUNTY OF UNION

On the 12th day of September, in the year 1985, before me personally came Grover Connell, to me known, who being by me duly sworn, did depose and say that he resides at Westfield, New Jersey, that he is President of Connell Finance Company, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Marion Nechuta*  
 \_\_\_\_\_  
 Notary Public  
**MARION NECHUTA**  
 Notary Public of New Jersey  
 My Commission Expires Mar. 30, 1988  
 Registered in Union County

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FORM OF LEASE SUPPLEMENT

LEASE SUPPLEMENT NO. \_\_\_\_

Dated as of \_\_\_\_\_

between

CONNELL FINANCE COMPANY, INC.,

Lessor

and

CENTRAL LOUISIANA ELECTRIC COMPANY, INC.,

Lessee

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EXHIBIT A  
(to Lease)

LEASE SUPPLEMENT NO. \_\_\_\_\_

DATED \_\_\_\_\_

PURSUANT TO LEASE OF RAILROAD EQUIPMENT DATED AS OF JULY 26, 1985  
(THE "LEASE") BETWEEN CONNELL FINANCE COMPANY, INC.,  
AS LESSOR AND CENTRAL LOUISIANA ELECTRIC COMPANY, INC., AS LESSEE

The Lessor at the request of the Lessee, hereby agrees to acquire and lease to Lessee the Equipment described in Schedule A hereto under and pursuant to the Lease and the additional terms and conditions stated herein. The Lessor shall accept an assignment of the Lessee's purchase order(s) or purchase agreement(s) (or other similar documentation, as provided in Section 8 hereto), pertaining to said Equipment identified in said Schedule A, and all the Lessee's right, title and interest in and to the Equipment. The Lessee agrees to accept such Equipment (provided such Equipment conforms with all applicable specifications) and to lease the same from the Lessor under and pursuant to the Lease and the additional terms and conditions stated herein. Words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Lease.

1. Description of Equipment. Schedule A attached hereto sets forth a description of the Equipment to be leased pursuant to the Lease and this Lease Supplement, the amount of the Purchase Price (the "Purchase Price") to be paid by the Lessor to acquire the Equipment, the Closing Date, the Manufacturer of the Equipment (the "Manufacturer"), and the lease group identifying letter with respect to each such Unit.

2. Closing Date. The Closing Date with respect to the Equipment is the date of this Lease Supplement as set forth in the heading hereto.

3. Fixed Lease Term. The term of the Lease for each Unit described herein shall commence on the date that such Unit is received and accepted by the Lessee (as evidenced by the Lease Supplement in respect thereof) and shall continue until the Termination Date.

4. Interim Rent Payable by Lessee. Interim Rent ("Interim Rent") for the Equipment shall be payable by the Lessee on such date (the "Interim Rent Payment Date") and at the rates as set forth in Schedule A attached hereto.

5. Basic Rent Payable by Lessee. Basic Rent ("Basic Rent") for the Equipment shall be payable by the Lessee on such dates (the "Rent Payment Date") and at the rates as set forth in Schedule A attached hereto.

6. Casualty and Termination Value. The Casualty and Termination Value for each Unit during the original term of the Lease shall be the percentage of the Lessor's Cost of such Unit as shown on Schedule B attached hereto for the relevant payment date.

7. Assumptions. The Assumptions used for all calculations of Basic Rent, the Rent Payment Dates, the Casualty and Termination Values and any other amounts payable to the Lessor by the Lessee pursuant to the Lease are as set forth in Schedule C hereto.

8. Warrantee Documents (the "Warranty Documents"). Lessee will provide Lessor with Warranty Documents substantially in the form of Schedule D hereto dated as of the date hereof. With the consent of the Lessor, which consent shall not be unreasonably withheld, and which consent shall be evidenced by Lessor's acceptance of such Equipment hereunder, the Lessee may provide Lessor with such substitute Warranty Documents as are necessary to convey all Manufacturer's warranty, title and interest in the Equipment to the Lessor.

9. Certifications, Representations and Warranties of the Lessee. The Lessee hereby certifies and agrees that:

a. the Equipment described in the attached Schedule A (the "Accepted Equipment") has been delivered to, and is now in the possession of the Lessee, on the date hereof and has been accepted by the Lessee under and pursuant to and subject to all terms and conditions of said Lease and the above captioned Lease Supplement which pertains to the Accepted Equipment.

b. the Accepted Equipment declared to be accepted hereby is in good order and condition, and conforms to all specifications and requirements.

c. the Purchase Price for each Unit of the Accepted Equipment is as set forth in the attached Schedule A.

d. all representations and warranties of the Lessee contained in Section 5 of the Lease are true and correct as of the date hereof.

e. attached hereto are copies of the invoices pertaining to the Purchase Price of each Unit of the Accepted Equipment, each of which is true and correct. The execution of this Lease Supplement will in no way relieve or diminish the responsibility of the Manufacturer of the Equipment for any warranty it has made with respect thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Supplement to be executed by their respective officers or employees thereunder duly authorized as of the day and year first above written.

\_\_\_\_\_,  
Lessor

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_,  
Lessee

By \_\_\_\_\_  
Its \_\_\_\_\_

# SCHEDULE A

Equipment = \_\_\_\_\_

<u>Number of</u> <u>Units</u>	<u>Serial</u> <u>Numbers</u>	<u>Closing</u> <u>Date</u>	<u>Purchase</u> <u>Price</u>	<u>Interim Rent</u> <u>Percentage</u>	<u>Interim Rent</u> <u>Payment Date</u>	<u>Basic Rent</u> <u>Percentage</u>	<u>Rent Payment</u> <u>Dates</u>
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SCHEDULE B

CASUALTY AND TERMINATION VALUES

<u>Rent Payment Dates</u>	<u>Casualty Values</u>	<u>Rent Payment Dates</u>	<u>Termination Values</u>
	<u>Percent of Purchase Price</u>		<u>Percent of Purchase Price</u>

## SCHEDULE C

### ASSUMPTIONS

1. The Closing Date will occur on \_\_\_\_\_, but in any event, will occur no later than \_\_\_\_\_, and the Equipment will be deemed to have been placed in service on the Closing Date.

2. The Transaction Expenses will be amortizable by the Lessor ratably over the initial term of the Lease.

3. The Equipment will qualify as "new Section 38 property"; pursuant to Section 46 of the Code, the Owner will be entitled to the investment tax credit attributable thereto in an amount equal to 10% (or, if the Lessor so elects, 8%) of the basis for the Equipment described in paragraph 9 below; and such investment tax credit will be allowed in the Lessor's taxable year ending \_\_\_\_\_.

4. The Equipment will continue to qualify as "section 38 property" during the 7-year period commencing on the Closing Date.

5. The Lessor's basis for the Equipment for the purpose of calculating the investment tax credit and depreciation will be equal to the Purchase Price.

6. The Equipment will not be sold, exchanged or otherwise disposed of at any time during the initial term of the Lease.

7. The Lessor will recognize no income or gain during the initial term of the Lease as a result of the Lessee's maintaining the Equipment or by reason of Lessee's making additions to or modifications of the Equipment.

8. No costs, fees, charges or expenses paid by the Lessee to any party (other than to the Lessor pursuant to the terms of the Lease) will be includible in the gross income of the Lessor (unless there is an offsetting deduction available to such party in the taxable year of inclusion or in a prior taxable year on account of the payment of such costs, fees, charges or expenses).

9. The Lessor's investment will be in the amount of the Purchase Price. In addition, on the Closing Date, the Lessor will pay the Transaction Expenses in an amount equal to \$5,000.

10. The Federal, state and local income tax rates applicable to the Lessor on \_\_\_\_\_ will still be in effect on the Closing Date, and no change in the Code or a change in the applicable home state laws or a version of which has been proposed by any member of the legislative or executive branch which is enacted or will become effective on or before \_\_\_\_\_ or a change in the income tax regulations, published administrative interpretations or judicial decisions thereunder will be both published, and effective on or before \_\_\_\_\_.

SCHEDULE D

Warrantee Documents

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that the undersigned, THRALL CAR MANUFACTURING COMPANY (the "Seller") for and in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration paid by \_\_\_\_\_ as the owner under Contract No. \_\_\_\_\_ dated \_\_\_\_\_ between THRALL CAR MANUFACTURING COMPANY and \_\_\_\_\_ does hereby grant, bargain, sell deliver, and set over unto the Buyer all of its right and title to the following railroad equipment (the "Equipment"):

<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>CAR NUMBERS</u>
	100-Ton Gondola Coal Car	

The Seller warrants to the purchaser, its successors and assigns, that the title to the said goods, chattels, and property hereby vested in the Purchaser is free and clear from all liens and encumbrances of every kind and that the Seller is the true and lawful owner thereof and has good right and lawful authority to grant, bargain, sell and convey as aforesaid and that it will, and will cause its successors and assigns, to, warrant and defend the said goods, chattels, and property unto the Purchaser against the claims and demands of all persons whomsoever.

IT WITNESS WHEREOF, Seller has cause this instrument to be executed in its name this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

THRALL CAR MANUFACTURING COMPANY

(Corporate Seal)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTESTED:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SCHEDULE D

Warrantee Documents, cont'd.

CERTIFICATE OF INSPECTION

To: THRALL CAR MANUFACTURING COMPANY  
P.O. Box 218  
Chicago Heights, Illinois 60411

I, the duly appointed and authorized representative of the \_\_\_\_\_, (hereinafter called the Purchaser), for the purchase of the 100-Ton, Gondola Coal Cars, \_\_\_\_\_ DO  
HEREBY CERTIFY that there have been inspected on behalf of the Purchaser of the following units of railroad equipment:

<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>CAR NUMBERS</u>
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I do further certify that the foregoing cars are in good order and ready for service and in compliance with the specifications applicable thereto, and to all applicable Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads and Federal Railway Administration.

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